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September 13, 2005

VIA ELECTRONIC FILING

The Honorable Gregory M. Sleet
J. Caleb Boggs Federal Building
844 King Street
Wilmington, DE 19801

Re: Textron Innovations Inc. v. The Toro Company
C. A. No. 05-486 (GMS)
M&G No. 6372.149-US-ZA

Dear Judge Sleet:

Toro respectfully submits this response to Textron Innovations Inc.'s ("TII") September 12, 2005 letter.

In requesting oral argument, TII contends that oral argument is necessary because The Toro Company ("Toro") has raised new arguments in its reply brief. Contrary to TII's statements, Toro raised no new arguments in its reply brief. Toro merely responded to the issues raised by TII in its responsive brief.

Toro's opening brief made the point that TII is a holding company wholly owned by Textron, Inc. D.I. 6 at p. 1, n.1. In response, TII argued for the first time that it is not fair to transfer the case to Minnesota because TII is not subject to personal jurisdiction in Minnesota. D.I. 19 at p. 7. Toro's reply brief merely responded to TII's personal jurisdiction argument.

In supporting its arguments, Toro relied on available public records to show TII's relationship with Textron, Inc. For example, the public records show that Textron, Inc. wholly owns TII. *See* D.I. 23 at Ex. S. The public record also shows that the parent, Textron, Inc., assigned the three patents at issue in this case to TII just before TII filed suit. Specifically, Textron, Inc. transferred the patents on Friday, July 8, 2005, and on Monday, July 11, 2005. On Tuesday, July 12, 2005, TII filed its Complaint against Toro. TII's argument that TII is not subject to personal jurisdiction in Minnesota ignores the realities of TII's relationship with Textron, Inc. It also ignores the Federal Circuit's holding in the *Dainippon* case.

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TII also admits its intimate relationship with Textron, Inc. by acknowledging that Textron, Inc. manufactures and sells commercial embodiments of the patents without any formal license from TII. *See* Mr. Johnson's letter to the Court dated September 12, 2005, p. 2.

Given the extensive briefing and correspondence on this motion, Toro does not wish to request oral argument. However, should the Court believe that oral argument would be helpful in reaching a decision, Toro would be pleased to participate.

Respectfully,

/s/ Richard L. Horwitz

Richard L. Horwitz

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cc: Clerk of the Court (via hand delivery)
Edmond D. Johnson (via hand delivery)
Earl D. Reiland (via facsimile)